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LOK SABHA

The following Bill was introduced in Lok Sabha on the 17th
September, 1964:—

BILL No. 62 OF 1964

A Bill further to amend the Foreign Exchange Regulation Act, 1947.

BE it enacted by Parliament in the Fifteenth Year of the Republic
of India as follows:—

1. (1) This Act may be called the Foreign Exchange Regulation
(Amendment) Act, 1964.

Short
title and
commencement.

(2) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

7 of 1947. 2. In sub-section (2) of section 1 of the Foreign Exchange Regula-
tion Act, 1947 (hereinafter referred to as the principal Act), the
words "and to branches and agencies outside India of companies or
bodies corporate registered or incorporated in India" shall be insert-
ed at the end.

Amend-
ment of
section 1.

3. In section 2 of the principal Act,—

Amend-
ment of
section 2.

2 of 1934. 15 (i) in clause (g), the words, figures and letter "but does not
include special bank notes and special one-rupee notes issued
under section 28A of the Reserve Bank of India Act, 1934" shall
be inserted at the end;

(ii) after clause (g), the following clause shall be inserted,
namely:—

20 '(gg) "Indian customs waters" means the waters extend-
ing into the sea to distance of twelve nautical miles

measured from the appropriate base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river;";

(iii) in clause (k), after the words and figures "Public Debt Act, 1944," the words and figures "savings certificates to which 5 18 of 1944. the Government Savings Certificates Act, 1959, applies," shall be 46 of 1959. inserted.

Insertion
of new
sections
2A and 2B.

4. After section 2 of the principal Act, the following sections shall be inserted, namely:—

Officers
of Enfor-
cement.

"2A. The Central Government may appoint a Director of 10 Enforcement and as many Deputy Directors of Enforcement, Assistant Directors of Enforcement and such other officers as it thinks fit to be officers of Enforcement for the purpose of enforcing the provisions of this Act.

Entrust-
ment of
functions
of Dir-
ector or
other offi-
cer of En-
forcement.

2B. The Central Government may, by order and subject to 15 such limitations and conditions as it thinks fit to impose, authorise any officer of Enforcement, or any officer of customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of 20 Enforcement or any other officer of Enforcement under this Act as may be specified in the order."

Amend-
ment of
section 4.

5. In section 4 of the principal Act, in sub-section (1), for the words "buy or borrow from", the words "buy or otherwise acquire or borrow from" and for the words "sell or lend to", the words "sell 25 or otherwise transfer or lend to" shall be substituted.

Amend-
ment of
section 5.

6. In sub-section (1) of section 5 of the principal Act, after clause (a), the following clause shall be inserted, namely:—

"(aa) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident out- 30 side India;".

Amend-
ment of
section 8.

7. In section 8 of the principal Act, in sub-section (2), after the words "any gold", the word "jewellery" shall be inserted, and for the words "obtained from an authorised dealer", the words "obtained by him from an authorised dealer" shall be substituted. 35

Amend-
ment of
section 10.

8. In sub-section (1) of section 10 of the principal Act, in the opening paragraph, for the words "do or refrain from doing any act with intent to secure—", the words "do or refrain from doing any- 40 thing or take or refrain from taking any action which has the effect of securing—" shall be substituted.

9. In sub-section (2) of section 12 of the principal Act, in the opening paragraph, for the words "do or refrain from doing any act with intent to secure that—", the words "do or refrain from doing anything or take or refrain from taking any action which has the effect of securing that—" shall be substituted.

Amendment of section 12.

10. In section 13 of the principal Act, in sub-section (4),—

Amendment of section 13.

(i) in clause (b), the word "or" shall be inserted at the end;

(ii) after clause (b), the following clause shall be inserted, namely:—

10 "(c) transfer any share from a register outside India to a register in India."

11. In section 17 of the principal Act,—

Amendment of section 17.

(a) in sub-section (1),—

15 (i) for the words "settle any property, otherwise than by will, so that a person who at the time of the settlement", the words "settle, or make a gift of, any property so that a person who at the time of the settlement or the making of the gift" shall be substituted;

(ii) the words " , other than by will," shall be omitted;

20 (b) for sub-section (2), the following sub-section shall be substituted, namely:—

25 "(2) Any settlement or gift made or any power exercised as aforesaid without the permission of the Reserve Bank shall not be invalid merely on the ground that such permission has not been obtained, but no payment or remittance in pursuance of such settlement, gift or power shall be made to, or for the credit of, or on behalf of any person resident outside India, elsewhere than in territories notified by the Reserve Bank, except with the general or special permission of the Reserve Bank which may be granted conditionally or unconditionally."

12. In section 18 of the principal Act, after sub-section (3B), the following sub-section shall be inserted, namely:—

Amendment of section 18.

35 "(3C) Except with the general or special permission of the Central Government or the Reserve Bank, no person resident in India shall give a guarantee in respect of any debt or other obligation or liability of a person resident outside India."

Insertion
of new
sections
18A and
18B.

13. After section 18 of the principal Act, the following sections shall be inserted, namely:—

Restric-
tion on
appoint-
ment of
certain
companies
and firms
as agents
or techni-
cal advi-
sers in
India.

“18A. Without prejudice to the provisions of section 21 and notwithstanding anything contained in any other provision of this Act, a company (other than a banking company) which is not incorporated under any law in force in India or which is controlled directly or indirectly by persons resident outside India, or any branch or office of any such company in India, or a firm consisting wholly or in part of persons resident outside India, shall not accept appointment as—

(a) agent in India of any person, company or firm in the trading or commercial transactions thereof, or

(b) technical or management adviser in India of any person, company or firm,

except with the general or special permission of the Central Government or the Reserve Bank; and where such appointment is accepted without such permission, it shall be void.

Regula-
tion of
booking
of pas-
sages out-
side India.

18B. No airline, shipping company or travel agent shall, except with the general or special permission of the Reserve Bank and subject to such conditions, if any, as may be specified therein, book for any person a passage for a journey the whole or any part of which is outside India.”

Amend-
ment of
section 19.

14. In section 19 of the principal Act, sub-sections (3) and (4) shall be omitted.

Insertion
of new
sections
19A to
19F.

15. Sections 19A and 19B of the principal Act shall be re-numbered as sections 19G and 19H respectively and—

(a) before section 19G as so re-numbered, the following sections shall be inserted, namely:—

Power to
search
suspected
persons.

‘19A. (1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person has secreted about his person any documents which will be useful for or relevant to any proceeding under this Act, he may search that person.

(2) When any officer of Enforcement is about to search any person under the provisions of this section, the officer

of Enforcement shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of Enforcement superior in rank to him or a magistrate.

5 (3) If such requisition is made, the officer of Enforcement may detain the person making it until he can bring him before the gazetted officer of Enforcement or magistrate referred to in sub-section (2).

10 (4) The gazetted officer of Enforcement or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

15 (5) Before making a search under the provisions of this section, the officer of Enforcement shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all documents seized in the course of such search shall be prepared by such officer or other person
20 and signed by such witnesses.

(6) No female shall be searched by any one excepting a female.

25 (7) In this section and in sections 19C to 19G, the expression "document" includes Indian currency, foreign exchange and books of account.

30 19B. (1) If any officer of Enforcement authorised in this behalf by the Central Government by general or special order, has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under this Act he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

35 (3) Where any officer of Enforcement has arrested any person under sub-section (1) he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1898.

Power to
stop and
search
convey-
ances.

19C. Where an officer of Enforcement authorised in this behalf by the Central Government by general or special order, has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the commission of an offence under this Act, or that any documents which will be useful for or relevant to any proceeding under this Act is secreted therein, he may at any time stop any such vehicle or animal or vessel or, in the case of an aircraft, compel it to land, and—

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) seize any such document as is referred to above;

(d) break open the lock of any door or package for exercising the powers conferred by clauses (a), (b) and (c) if the keys are withheld.

Power to
search
premises.

19D. (1) If an officer of Enforcement, not below the rank of Assistant Director of Enforcement, has reason to believe that any documents which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of Enforcement to search for and seize or may himself search for and seize such documents.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Director of Enforcement or other officer exercising his powers", were substituted.

Power to
examine
persons.

19E. The Director of Enforcement may, during the course of any inquiry in connection with any offence under this Act,—

(a) require any person to produce or deliver any document relevant to the inquiry;

(b) examine any person acquainted with the facts and circumstances of the case.

19F. (1) The Director of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document in any inquiry which such officer is making in connection with any offence under this Act.

Power to
summon
persons
to give
evidence
and pro-
duce docu-
ments.

(2) A summons to produce documents may be for the production of certain specified documents or for the production of all documents of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required:

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

(b) in section 19G as so re-numbered,—

(i) for the words, brackets and figures “Where, in pursuance of an order made under sub-section (2) of section 19 or of a search warrant issued under sub-section (3) of the said section, any book or other document is furnished or seized, and the Director of Enforcement has reasons to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding four months or if, before the expiry of the said period of four months, any proceedings under section 23—”, the following shall be substituted, namely:—

“Where in pursuance of an order made under sub-section (2) of section 19 or of the provisions of section 19A, 19C or 19D, or of a requisition or summons under section 19E or 19F, any document is furnished or seized and the Director of Enforcement or any other officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order

made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding one year or if, before the expiry of the said period of one year, any proceedings under section 23—";

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(ii) in clause (a), for the words "including the proceedings before the Appellate Board, if any", the words "including the proceedings, if any, before the Appellate Board and the High Court" shall be substituted.

(c) after section 19H as so re-numbered, the following sections shall be inserted, namely:—

Prohibition of disclosure of documents or information except in certain cases.

19I. (1) If in the course of an inquiry under this Act, the Director of Enforcement is of the opinion that the contents of any document in his possession or control would be useful for, or relevant to, any proceeding which is in progress, or may be started under any other law for the time being in force, he may disclose such document or any information contained therein as he thinks fit to an officer duly authorised by or under such other law.

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(2) If any officer of Enforcement, except in the discharge in good faith of his duty as such officer in accordance with sub-section (1), or in compliance with any requisition made under any law for the time being in force, discloses any document or information obtained by him in his official capacity in the course of any inquiry under this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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Special provision regarding certain dealings in foreign exchange.

19J. (1) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value two hundred and fifty rupees, the burden of proving that the foreign exchange came into his possession lawfully shall be on him.

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(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any police officer not below the rank of Inspector of Police or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit a contravention of sub-section (1) of section 4.

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Explanation.—For the purposes of this sub-section, the expression "public place" includes any public conveyance,

any hotel, any shop or any other place intended for use by or accessible to, the public.

5 (3) Where any person is arrested under sub-section (2) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.

5 of 1898.

10 (4) The provisions of the Code of Criminal Procedure, 1898, shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

(5) The provisions of this section shall have effect notwithstanding anything inconsistent therewith contained in any other provision of this Act.

15 16. In section 22 of the principal Act, for the word, figures and letter "section 19B", the word, figures and letter "section 19H" shall be substituted. Amendment of section 22.

17. In section 23 of the principal Act,—

20 (a) in sub-section (1), for the words, figures and brackets "If any person contravenes the provisions of section 4, section 5, section 9 or sub-section (2) of section 12", the following shall be substituted, namely:— Amendment of section 23.

25 "If any person contravenes the provisions of section 4, section 5, section 9, section 10, sub-section (2) of section 12, section 17, section 18A or section 18B";

(b) for sub-section (1A), the following sub-section shall be substituted, namely:—

30 "(1A) If any person contravenes any of the provisions of this Act or of any rule, direction or order made thereunder, for the contravention of which no penalty is expressly provided, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.";

(c) in sub-section (3),—

35 (i) after clause (a), the following clause shall be inserted, namely:—

"(aa) of any offence punishable under sub-section (2) of section 19 I,—

(i) where the offence is alleged to have been committed by an officer of Enforcement not lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Central Government;

(ii) where the offence is alleged to have been committed by an officer of Enforcement lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Director of Enforcement, or";

(ii) in clause (b), for the words and figures "or under section 54 of the Indian Income-tax Act, 1922, as applied by section 19 of this Act", the words, figures and letter "or section 23F" shall be substituted.

Amendment of section 23A.

18. In section 23A of the principal Act, for the words and figures 'under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word "shall" therein, the word "may" were substituted', the following shall be substituted, namely:—

"under section 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly."

Amendment of section 23E.

19. In section 23E of the principal Act,—

(i) in sub-section (1), for the words "and another member", the words "and two other members" shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Any person aggrieved by such order may, after depositing the sum imposed by way of penalty under section 23 and within forty-five days from the date on which the order is sent to the person committing the contravention, prefer an appeal to the Appellate Board:

Provided that the Appellate Board may entertain the appeal—

(a) after the expiry of the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time;

(b) without the deposit being made, if it is satisfied that there is sufficient reason to do so, subject to the condition that the deposit shall be made within such time before the date of the hearing of the appeal as it may allow and that the appeal shall stand dismissed, if the deposit is not so made.”;

(iii) in sub-section (3), for the words “shall be final”, the words, figures and letters “shall, subject to the provisions of section 23EE, be final” shall be substituted;

(iv) after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) The powers and functions of the Appellate Board may be exercised and discharged by Benches consisting of two members and constituted by the Chairman of the Appellate Board:

Provided that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to the third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.”.

20. After section 23E of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 23EE and 23EEE. Appeal to the High Court.

“23EE. An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 23E.

23EEE. Clerical or arithmetical mistakes in any decision or order passed by the Appellate Board or the Director of Enforcement under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Appellate Board or the Director of Enforcement or his successor in office, as the case may be.”.

Correction of clerical errors, etc.

21. In section 23F of the principal Act, after the words “Appellate Board”, the words “or the High Court” shall be inserted.

Amendment of section 23F.

22. In section 24A of the principal Act,—

(a) for the words, brackets and figures “furnished by any person under sub-section (2) of section 19, or has been seized under sub-section (3) of that section from the custody or control of any person,” the following shall be substituted, namely:—

Amendment of section 24A.

“furnished by any person under sub-section (2) of section 19, section 19E or section 19F, or has been seized under section 19A or section 19C or section 19D from the custody

or control of any person,";

(b) after the words "the Court", in the two places where they occur, the words, brackets, letter and figures "or the officer adjudicating under clause (a) of sub-section (1) of section 23" shall be inserted.

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Insertion
of new
section
25A.

23. After section 25 of the principal Act, the following section shall be inserted, namely:—

Certain
officers to
assist of-
ficers of
Enforce-
ment.

"25A. The following officers are hereby empowered and required to assist officers of Enforcement in the enforcement of this Act, namely:—

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(a) officers of the Customs Department;

(b) officers of the Central Excise Department;

(c) officers of Police;

(d) officers of the Central or State Government employed at any port or airport;

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(e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette."

Amend-
ment of
section 27.

24. In section 27 of the principal Act,—

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(a) in sub-section (2), clause (c) shall be re-lettered as clause (d) and before the clause as so re-lettered, the following clause shall be inserted, namely:—

"(c) provide, subject to such conditions as may be prescribed, for the publication of the names and other particulars of persons who have been found guilty of any contravention of the provisions of this Act, or of any rule, order or direction made thereunder;"

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(b) for sub-section (3), the following sub-section shall be substituted, namely:—

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"(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in 35 which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the

rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

STATEMENT OF OBJECTS AND REASONS

The Foreign Exchange Regulation Act, 1947 (7 of 1947), was originally enacted as a temporary measure. It was placed permanently on the Statute Book by Act 39 of 1957, which, among others, provided for the appointment of the Director of Enforcement and the constitution of an Appellate Board to hear appeals against the orders of the Director.

2. In the light of experience gained during the last seven years, both the Directorate of Enforcement and the Reserve Bank of India have suggested certain further amendments to the Act. The working of the Appellate Board also has shown the need for certain changes in the Act. It is, therefore, considered necessary to amend the Act further for removing certain difficulties which have been experienced in the working of the Act.

3. The principal amendments proposed are as follows:—

(a) to empower the Reserve Bank of India to control the transfer of shares of a foreign company from a register outside India to a register in India and to regulate the giving of guarantees by persons resident in India in respect of debts or liabilities of persons resident outside India;

(b) to control and regulate payments or remittances in favour of a non-resident in pursuance of any settlement of property by will as well as by gifts;

(c) to control and regulate the appointment of foreign companies, firms or branches thereof as the agents or advisers of companies and firms in India;

(d) to require airlines, shipping companies and travel agents to obtain the general or special permission of the Reserve Bank of India in respect of international travel bookings;

(e) to include provisions on the lines of Rule 132A of the Defence of India Rules, 1962, prohibiting unauthorised dealings in foreign exchange brought in by tourists and tightening the control over such dealings;

(f) to confer additional powers on officers of the Enforcement Directorate similar to those conferred by the Customs Act,

1962, on officers of the Customs Department, in regard to search and arrest of persons, search of conveyances and premises and summoning of persons to give evidence and produce documents, etc.;

(g) to increase the strength of the Appellate Board from two to three members; and

(h) to confer a right of appeal to the High Court on questions of law from decisions or orders of the Appellate Board.

4. Opportunity has been taken to undertake certain other amendments of a minor nature.

5. The Bill seeks to achieve these objects.

NEW DELHI;

T. T. KRISHNAMACHARI.

The 3rd September, 1964.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 1(22)EC/64, dated the 7th September, 1964 from Shri Bali Ram Bhagat, Minister of Planning to the Secretary, Lok Sabha.]

The President having been apprised of the subject matter of the Foreign Exchange Regulation (Amendment) Bill has been pleased to recommend its consideration in the Lok Sabha under article 117(3) of the Constitution.

FINANCIAL MEMORANDUM

New Section 2A inserted by clause 4 of the Bill provides that the Central Government may appoint a Director of Enforcement and as many Deputy and Assistant Directors of Enforcement and such other officers as it thinks fit for the purpose of enforcing the provisions of the Act. This is an enabling provision empowering the Central Government to appoint the various officers in the Directorate of Enforcement. Since the Directorate of Enforcement is already in existence, no additional expenditure is expected to be incurred immediately due to this provision of the Bill. However, as and when the activities of the Directorate expand, it may be necessary to increase the strength of the staff and the consequent increase in expenditure will be met by normal budgetary provision. A budget provision of Rs. 9,68,600 has been made for the Directorate of Enforcement for the current year (1964-65). It is not possible to give any estimate of additional expenditure which may be incurred in future.

2. Clause 19(i) of the Bill provides for the appointment of a third member of the Appellate Board. At present, the Board consists of two members, and officers of the Central Government are appointed as members of the Board in addition to their normal duties. Consequently, the addition of a third member, on the same basis, is not expected to involve any additional expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill seeks to amend section 27 of the Act (relating to power of the Central Government to make rules) so as to provide for the making of rules for the publication of the names and other particulars of persons who have been found guilty of any contravention of the provisions of the Act or of any rule, order or direction made thereunder. This is a matter of procedure. The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.

